**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

EPHRIAM JACKSON, # 7700040802 **PETITIONER**

VERSUS **CIVIL ACTION NO. 3:16CV682-DPJ-FKB**

HINDS COUNTY SHERIFF'S DEPARTMENT and MADISON COUNTY SHERIFF'S DEPARTMENT **RESPONDENTS**

ORDER OF DISMISSAL

This matter is before the Court *sua sponte* for consideration of dismissal. *Pro se* Petitioner Ephriam Jackson filed this Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241.[1] Jackson is a pretrial detainee of both Hinds and Madison Counties and is being held at the Madison County Detention Center. He asks the Court to dismiss the pending State charges of three counts of bad checks, one for Hinds County and two for Madison County. The Court has considered and liberally construed his pleadings. The case is dismissed.

I. Background

Jackson alleges that he was arrested by the Byram Police Department on February 2, 2016, and charged with one count of passing a bad check. Am. Pet. [8] at 9. For this, Jackson claims he was detained at the Hinds County Detention Center and was given an excessive bail amount. *Id.* at 7, 9. To date, Jackson contends he has yet to be indicted or released on bail. *Id.*

On June 13, 2016, Jackson allegedly was transferred to the Madison County Detention Center on two counts of passing bad checks in that county. *Id.* at 9. Jackson complains that

[1]This case was originally filed in civil action number 3:16cv564-HTW-LRA. Because the Complaint contained both 42 U.S.C. § 1983 and habeas claims, the habeas claims were severed and opened in this case on September 1, 2016.

Madison County has denied him bail altogether. *Id.* at 7. Jackson further maintains that, while he was indicted on the Madison County charges, those indictments are defective for failing to allege whether the crimes are felonies or misdemeanors. *Id.* at 9.

In addition to Jackson's complaints about bail and indictments, he asserts that both counties are imprisoning him for a debt and without the notice referenced in Mississippi Code Annotated § 97-19-57. *Id.* at 7.

Finally, Jackson amends his Petition to add claims regarding the conditions of his confinement at the Madison County Detention Center: alleged verbal abuse, extreme cold, threats, and discrimination. *Id.* at 8-9. Jackson asks this Court to drop or downgrade the charges. *Id.* at 8.

II. Discussion

In this habeas case, Jackson challenges that his pending criminal charges and the conditions of his confinement.

A. Criminal Charges

Absent "special circumstances," federal habeas corpus is not available "to adjudicate the merits of an affirmative defense to a state criminal charge prior to a judgment of conviction by a state court." *Braden v. 30th Judicial Cir. Ct. of Ky.*, 410 U.S. 484, 489 (1973). An exception is drawn based on the type of relief sought by the petitioner. *Brown v. Estelle*, 530 F.2d 1280, 1282-83 (5th Cir. 1976). The distinction is "between a petitioner who seeks to 'abort a state proceeding or to disrupt the orderly functioning of state judicial process' by litigating a . . . defense . . . prior to trial, and one who seeks only to enforce the state's obligation to bring him promptly to trial." *Dickerson v. Louisiana*, 816 F.2d 220, 226 (5th Cir. 1987) (quoting *Brown*, 530 F.2d at 1283). "[A]n attempt to dismiss an indictment or otherwise prevent a prosecution is of the first type." *Id.*

Jackson asks that the criminal charges, for both counties, be dismissed or downgraded. The relief can best be described as an effort to "prevent a prosecution" of the charges currently pending against him. *Dickerson*, 816 F.2d at 226. Jackson does not "seek[ ] only to enforce" his right to have the state bring him to trial. *Id.* Since federal habeas corpus is not available for the remedy he seeks, the habeas claims should be dismissed without prejudice.[2]

B. Conditions of Confinement

To the extent Jackson challenges the conditions, rather than the fact, of his confinement, those claims are not properly brought in a habeas action. *Cook v. Tex. Dep't of Crim. Justice*, 37 F.3d 166, 168 (5th Cir. 1994). These claims are dismissed without prejudice to Jackson's right to pursue them in a separate civil action.

IT IS THEREFORE ORDERED AND ADJUDGED that, for the reasons stated above, this cause should be, and is hereby, **DISMISSED WITHOUT PREJUDICE**. A separate final judgment shall issue pursuant to Federal Rule of Civil Procedure 58.

SO ORDERED AND ADJUDGED this the 28th day of September, 2016.

s/ *Daniel P. Jordan III*
UNITED STATES DISTRICT JUDGE

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[2]Even assuming Jackson is seeking a writ ordering the state to bring his case to trial, "the requirement of exhaustion of state remedies still must be met." *Brown*, 530 F.2d at 1283 (quoted in *Dickerson*, 816 F.2d at 226). To satisfy the exhaustion requirement, petitioners must generally present their claims to the state's highest court. *See O'Sullivan v. Boerckel*, 526 U.S. 838, 840 (1999). And the failure to do so can be considered *sua sponte*. *See Shute v. Texas*, 117 F.3d 233, 237 (5th Cir. 1997). Here, Jackson filed a motion addressing these issues in county court on June 21, 2016, but no ruling was returned as of September 19, 2016. *See* Resp. [8] at 2. Jackson has not, therefore, exhausted state remedies and has not demonstrated "special circumstances" that would allow this petition. *Dickerson*, 816 F.2d at 225.